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15 *Attorneys for Defendant Google LLC*

16
17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19 CHASOM BROWN, WILLIAM BYATT,
20 JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
21 individually and on behalf of all similarly
situated,

22 Plaintiffs,

23 v.

24 GOOGLE LLC,
25 Defendant.

26 Case No. 5:20-cv-03664-LHK-SVK

27
28 **GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
JOINT SUBMISSION RE: DEPOSITION
OF GOOGLE OFFICER SUNDAR
PICHAI**

Referral: Hon. Susan van Keulen, USMJ

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Case No. 5:20-cv-03664-LHK-SVK

GOOGLE'S ADMINISTRATIVE MOTION TO SEAL PORTIONS OF JOINT SUBMISSION RE: DEPOSITION OF
GOOGLE OFFICER SUNDAR PICHAI

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully
 3 seeks to seal certain portions of the parties’ Joint Submission Re: Deposition of Google Officer
 4 Sundar Pichai (“Joint Submission”), which contains a single sentence with non-public, sensitive
 5 confidential and proprietary information regarding the financial impact of a certain technical feature to
 6 Google. This information is highly confidential and should be protected.

7 This Administrative Motion pertains to the following information contained in the Joint
 8 Submission:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
December 17, 2021 Joint Submission	Portions highlighted in yellow at: 2:19	Google

12 **II. LEGAL STANDARD**

14 The common law right of public access to judicial records in a civil case is not a constitutional
 15 right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)
 16 (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have
 17 refused to permit their files to serve as reservoirs of . . . sources of business information that might
 18 harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue
 19 constitutes “competitively sensitive information,” such as “confidential research, development, or
 20 commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at
 21 *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.
 22 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of
 23 information, including, but not limited to, trade secrets or other confidential research, development, or
 24 commercial information”).

25 **III. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”
 26 STANDARD AND SHOULD ALL BE SEALED**

27 Courts have repeatedly found it appropriate to seal documents that contain “business
 28 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good

cause to seal is shown when a party seeks to seal materials that “contain[] confidential information about the operation of [the party’s] products and that public disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’ standard where that information could be used to the company’s competitive disadvantage”) (citation omitted).

Here, the Joint Submission comprises confidential information regarding financial impact of a certain technical feature to Google that Google does not share publicly. Specifically, this information provides details related to advertising-related costs associated with implementing a certain technical change to its Incognito Mode. Such information reveals Google’s internal strategies, system designs, and business practices for operating and maintaining one of its important services while complying with legal and privacy obligations.

Public disclosure of the above-listed information would harm Google’s competitive standing it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive business information related to Google’s processes and policies to ensure the integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is not publically available”).

Moreover, if publicly disclosed, malicious actors may use such information to seek to compromise Google’s internal systems and data structures. Google would be placed at an increased

1 risk of cyber security threats, and data related to its users could similarly be at risk. *See, e.g., In re*
2 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
3 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
4 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
5 threat is an additional reason for this Court to seal the identified information.

6 The information Google seeks to redact is the minimal amount of information needed to
7 protect its confidential information from being exposed to its competitors and the public at large. The
8 “good cause” rather than the “compelling reasons” standard should apply but under either standard,
9 Google’s sealing request is warranted.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Google respectfully requests that the Court seal the identified
12 portions of the Joint Submission .

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